MISCELLANY.

The Necessity for Tax Reform.—We copy the following letter to the editor of the Richmond Times-Dispatch:

Sir: While I agree fully with the clear and strong statement of Dr. Douglas S. Freeman, in your issue of January 22, showing the absolute necessity for tax reform in Virginia, and can add nothing to the force of his argument; yet I believe that I can give an illustration of the unfair, unjust, even confiscatory character of the present tax laws of this State, which surpasses that of the Danville, Va., widow, given by Dr. Freeman. That widow had, for the support of herself and her children, the income from a trust fund of $3,000, which had been invested by the court in a six per cent. mortgage on real estate, and, therefore, yielded a gross annual income of $180. The State and City taxes on that mortgage, assessed for taxation at its face value, amounted to $52.50, or 29 per cent. of the widow's total income. In view of the fact that tangible personal property is assessed at an average of about 37 per cent. of its actual value throughout this state; and in view of the further fact that much of this tangible personal property, in numerous branches of business, yields an income of 10, 20, or even 50 per cent., it is manifest that the imposition of a tax on intangible personal property amounting to 29 per cent of its annual income, especially when intangibles are assessed at their full value, is extremely oppressive. It is about what one might expect under the governments of Russia, Turkey or Persia, but not under the government of a free and educated people like Virginians.

But the unfairness, the injustice and the oppressiveness of Dr. Freeman's illustration appears to be the personification of generosity on the part of the State and local government, when compared with the operation of another feature of Virginia's tax laws, which I shall now consider.

For many years past the tax law has imposed a tax on all money held by any citizen in bank on the 1st day of February of each year, no matter how short a time it remained there. Much could be said against the oppressiveness of this law in the case of the ordinary citizen; for since such a fund is usually a portion of his income from the previous year, on which he is taxed 1 per cent., he has also to pay a state and local tax, sometimes as much as 2 per cent., making an aggregate under this double taxation of 3 per cent. on his bank account as of February 1st. But this illustration applies to the average man, who is free to dispose of his money at will, to buy non-taxable securities or anything else, in order to circumvent an unjust law. The real hardship of this feature of the tax law is found in numerous instances where funds, belonging to persons of limited means, generally widows and children, are tied up in court, and cannot, therefore, be handled by the owners in

the same manner in which a man controls his own money. In every suit brought for the sale of real estate or securities, the proceeds of sale have to go through the court. And as such suits are being brought all the time throughout the state, much of this money is necessarily tied up in court on February 1st of each year. This is believed to be especially the case outside of the largest cities of the State, where the courts are not continuous as in the cities, and where the opportunities of investment in non-taxable securities are not so favorable. Now what is the result of this accidental tying up of court funds on the 1st day of February? The banks pay only 3 per cent. per annum on court deposits. The State and city taxes in the city of Richmond, for instance, aggregate 1¾ per cent. Consequently, the owners of the court fund get only 42 per cent., while the government gets 58 per cent. of the income for a whole year. Now, while this is a far more oppressive case than that of Dr. Freeman's Danville widow, yet this case even is not the most iniquitous feature of this tax on court funds in bank on February 1 of each year. Since these court sales of land and securities are being made all the time throughout the state, a good many of these court funds must necessarily be deposited in bank in the month of January. And as these funds are being distributed by the courts all the time, a good many of them must be taken out of bank during February. Or to give an extreme case, which more fully shows the absolute injustice of this law as to court funds: If a court fund is deposited in bank to the credit of the court on January 31, and withdrawn by a decree of court on February 2, and then invested in real estate by the court, that fund pays a whole year's property tax, State and local, because it happened to be deposited in bank to the credit of the court on February 1, and then it pays a second property tax for the same year on the investment. Under the rate of taxation in the city of Richmond this would impose a tax of almost 3½ per cent. for one year on funds and property controlled by the court. Now, while it is admitted that this last illustration is rather an extreme case, yet the payment to the State and local governments of 58 per cent. of the income on these court funds, while the beneficiaries, frequently poor widows and orphans, get only 42 per cent., is a yearly occurrence in Richmond; and it is presumed that the same thing happens, more or less modified by the rate of the local tax, in many other cities and many counties.

Now what is the remedy? Either to abolish the tax on all court funds, or place court funds along with choses in action or intangibles under the proposed Fletcher bill in the Senate.

If any of the members of the Legislature have any doubt about the extreme hardship, and even confiscatory character, of the present tax law as to court funds, it is only necessary for them to confer with any city judge in Virginia who has equity jurisdiction.

PRESTON COCKE.

Cases on Rehearing.—Rehearing granted in: Tazewell Coal, etc., Co. *v.* Gillespie (not yet reported in "Register," in 6 Va. App. 24.).

Rehearings refused in: Southern Ry. Co. *v.* McMenamin; Walter *v.* Whitacre; Moorman and Hurt *v.* City of Lynchburg; Lambert's Point Co. *v.* N. & W. Ry. Co.; White *v.* Hall; Atlantic Coast Line R. Co. *v.* Grubbs; Miller & Co. *v.* Lyons; Washington Sou. Ry. *v.* Grove; Western Union Tel. Co. *v.* White.

New Rules of Circuit Court of Appeals for the Fourth Circuit.—To the Editor of "The Virginia Law Register:"—The Circuit Court of Appeals for the Fourth Circuit promulgated on April 1st, 1912, a new set of rules, making some important and beneficial changes in the practice, which will doubtless be of interest to many of the bar. Using the word "appeal" in the broadest sense, an effort will be made to state briefly the purport of the more important changes. The chief purpose of the new rules is to lessen the cost of appeals by reducing the length of the transcripts. One of the provisions (sec. 7 Rule 14) eliminates the copying and printing of certain formal parts of every record. In lieu thereof the originals are certified to the appellate court, and there is to be inserted in the transcript a brief memorandum stating only the essential facts shown by such documents. In a law case the writ of error, for instance, is not copied into the transcript, but is to be certified to the appellate court and in the transcript is to be inserted a memorandum stating simply the date of the writ and the date when the copy thereof for the adverse party was lodged in the office of the clerk of the trial court. This provision applies also to petitions for writ of error or for appeal, to orders granting writ of error or appeal, to appeal bonds, to citations, to returns (or waiver) of service of citations, and to replications in equity.

Another and more important change is found in the provisions (Rule 14) which, except where counsel agree as to what shall go into the transcript, give the trial judge the power to determine what shall be included in the transcript proper. It is made the duty of the trial judge to direct the omission of unnecessary matters, and especially to prevent unnecessary duplications in the transcripts. Where, however, any party is dissatisfied with the ruling of the trial judge, he may have printed and certified to the appellate court an addendum to the record containing the matter excluded by the trial judge. Such addendum is to be printed under separate cover, which shall contain the title of the cause, and shall show that it is an addendum to the transcript and at whose instance it was printed. The cost of an addendum is to be borne in the first instance by the party who requires it.

A feature of the new rules which may cause some misunderstanding is that two quite different plans for procuring and printing transcripts are provided for. Under the Act of Congress of February

13th, 1911 (36 U. S. Statutes at Large, p. 901) an appellant is given the right to print the transcript of record himself, and it is forbidden that he be required to procure as "copy" for the printer a written or typewritten official transcript of the record. However, in many cases, where considerable amounts are involved, and especially if the record be a short one, counsel on both sides will prefer that a clerk's transcript of record be made and sent to the clerk of the appellate court to be printed as heretofore. In view of these facts, Rule 14 makes provision for a proceeding under the above mentioned Act of Congress, while Rule 23 provides for consent proceedings according to the old practice. But under either rule the contents of the record, unless agreed upon by stipulation of counsel, are to be determined by the trial judge—subject to the right of either party to print an addendum to the transcript. No transcript shall be certified by a trial court clerk unless it contains either the stipulation of counsel or the written determination of the trial judge as to the contents of the transcript. Sec. 7 Rule 14, sec. 1, Rule 23.

Where an appellant proceeds under the Act of Congress above mentioned it is advisable that he follow closely both the rules of the Circuit Court of Appeals, and those of the District Court. The Act requires that the trial judges prescribe rules in relation to the "printed transcripts of record" and it is understood that such rules have been promulgated by all of the District Courts of this circuit. The size of page and of type of the printed transcripts is governed by C. C. A. Rule 26; the order of arrangement of the parts by sec. 2 Rule 14. This order, briefly, is that of the time of filing, entering or making the parts. Under the new rules citations are returnable forty, instead of thirty, days after issue. Printed transcripts filed by appellants must be certified and filed within forty days from the issue of citation unless for good cause the time be enlarged. Sec. 1, Rule 16. Within the same time the appellant must furnish three copies of the transcript and of any addendum thereto required by appellant, to the appellee. An addendum required by the appellee must be printed, certified, filed, and three copies thereof furnished to the appellant, within the same time.

Rule 24 relating to briefs has been changed in so far that it is now no longer necessary to print in the brief of appellant the assignments of error, and reply briefs are for the first time specifically authorized; provided they be filed at least three days before the case is reached in regular order on the argument docket. The particular attention of the bar is called to § 2b of Rule 24 which requires that when a **state statute** is relied upon such statute, or so much thereof as is necessary, be **printed in the brief** of the party relying thereon.

In this connection it seems advisable to call attention to the fact that in the federal appellate courts error against an appellee is never considered except when cross appeal has been regularly allowed. "Mere assertion of error in an appellee's brief does not give this

court jurisdiction to review alleged error against an appellee." Swager *v.* Smith, 193 or 194 Fed. ——.

Copies of the new rules of the Circuit Court of Appeals may be had on application to the clerk, Henry T. Meloney, Richmond, Va. Counsel proposing to take an appeal will find it highly advantageous to study these rules, as well as the Act of Congress above mentioned and the trial court rules relating to appeals.

HENRY C. MCDOWELL.

IN VACATION.

"Go About Your Business."—The old Temple clock in London bears a curious inscription, the origin of which is ascribed to a chance remark.

Some two hundred years or so ago a master workman was employed to repair and put in a new face upon the clock. When his work was nearly done he asked the benchers for an appropriate motto to carve upon the base. They promised to think of one. Week after week he came for their decision, but was put off. One day he found them at dinner in commons.

"What motto shall I put on the clock, your Lordship?" he asked of a learned judge.

"Oh, go about your business!" his Honor cried, angrily.

"And very suitable for a lazy, dawdling gang!" the clock maker is said to have muttered, as he retreated. It is certain that he carved "Go about your business" on the base.

The lawyers decided that no better warning could be given them at any hour of the day, and there the inscription still remains.—Harper's Weekly.

His Money's Worth.—An amusing story is told concerning a typical gamin charged with burglary, in whose defense Mr. Montagu Williams was briefed. Mr. Williams was engaged in another court when the case was called, but the youngster refused to be content with the substitute, and complained to the judge. "Suppose you went into a shop and bought and paid for a pair of breeks, and they sent you home the wrong pair, would you keep 'em?" "No," replied the judge laughingly. "Well," was the retort, "that's my case. I paid for Mr. Montagu Williams, and I wants him." Accordingly, the case was put back until counsel could attend, when, owing to Mr. Williams's ingenuity, the lad was found not guilty of the offense with which he was charged—the theft of a pair of trousers. The prisoner thereupon remarked: "Thank you, m'lud, and thank you, gentlemen.. I've had my money's worth this time." The judge joined